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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x
4 UNITED STATES OF AMERICA

5 v.

13 CR 368 (DLC)
Sentence

6 ARTHUR BUDOVSKY, a/k/a "Arthur
7 Belanchuk," a/k/a "Eric
8 Paltz,"

9 Defendant

10 -----x

11 New York, N.Y.
12 May 6, 2016
13 3:00 p.m.

14 Before:

15 HON. DENISE L. COTE

District Judge

16 APPEARANCES

17 PREET BHARARA

United States Attorney for the
Southern District of New York

18 CHRISTIAN EVERDELL

CHRISTINE MAGDO

19 KEVIN MOSLEY, D.O.J.

Assistant United States Attorney

20 DOAR RIECK KALEY & MACK

Attorney for Defendant

JOHN F. KALEY

21 DONNA R. NEWMAN

Attorney for Defendant

22 JEFFREY G. PITTELL

Attorney for Defendant

23 -also present-

24 JEREMIAH HAYNIE, IRS

MOLLY ROSEN, Paralegal

25 NICK EVERT, Paralegal

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(In open court; case called)

THE DEPUTY CLERK: Is the government ready to proceed?

MR. EVERDELL: We are, your Honor. Chris Everdell for the government. I'm joined by Trial Attorney Kevin Mosely from AFMLS, Christine Magdo from our office, Jeremiah Haynie from IRS Criminal Investigations, and Molly Rosen and Nick Evert who are paralegal specialists in our office.

THE DEPUTY CLERK: For the defendant, are you ready to proceed?

MR. KALEY: Yes. Good afternoon, your Honor.

John Kaley for Mr. Budovsky seated to my right. Also with me at counsel table is Donna Newman and Jeffrey Pittell.

THE COURT: Welcome everyone.

I have a document which is marked the second consent preliminary order of forfeiture as to specific property. It lists certain electronics that were seized. That list goes on for pages. I see that it's been signed by Ms. Magdo and Mr. Mosley, Mr. Budovsky, Mr. Kaley and Ms. Newman. I will sign it. It is part of the sentence today.

We have a presentence report in this case of April 27. Mr. Kaley, have both you and your client read the presentence report?

MR. KALEY: We have, your Honor.

THE COURT: We will get to the objections later. There are issues that have been argued to me in written

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1 submissions. Besides those issues contained in written
2 submissions, do you have any other objections to the
3 presentence report, Mr. Kaley?

4 MR. KALEY: No, your Honor.

5 THE COURT: Thank you.

6 The presentence report -- I'm sorry, Mr. Kaley, have
7 you and your client discussed it with each other?

8 MR. KALEY: We have, your Honor. We've discussed all
9 of our submissions to the Court in connection with sentencing
10 as well and we've discussed the presentence report.

11 THE COURT: Thank you so much.

12 The presentence report will be made part of the record
13 in this case and placed under seal. If an appeal is taken,
14 counsel on appeal may have access to the sealed report without
15 further application to this Court.

16 Let me list the submissions I've received in
17 connection with sentencing. I should indicate as well that, of
18 course in addition to the plea, there was a letter of April 8,
19 2016, and as a result of that letter, a Fatico hearing which
20 had been tentatively scheduled was canceled. I don't remember,
21 Mr. Kaley, if I've had occasion to discuss the April 8 letter
22 with you on the record, but the April 8 letter had essentially
23 two significant paragraphs of undisputed facts and made a
24 representation that the parties agree to the factual
25 representations in those paragraphs. I take it you've

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1 discussed each of those issues with care with your client?

2 MR. KALEY: I did, your Honor, and Mr. Budovsky
3 approved the letter, and I so notified the government.

4 THE COURT: Thank you so much.

5 So obviously, besides the plea, I relied on that
6 letter. I have a sentencing letter on behalf of Mr. Budovsky.
7 I have a volume of exhibit materials submitted in connection
8 with that sentencing memorandum. I have a sentencing
9 memorandum from the government. And in connection with that
10 sentencing memorandum, I have two volumes of materials.

11 As I understand it, all these materials have been
12 filed on ECF. Is that right, Mr. Everdell?

13 MR. EVERDELL: That's correct, your Honor.

14 THE COURT: Is that right, Mr. Kaley?

15 MR. KALEY: Yes, your Honor.

16 THE COURT: Thank you so much.

17 I also have received two sets of letters from the
18 government's victim witness coordinator. The cover letters are
19 January 21 and April 26, and they contain statements offered by
20 victims, and I've reviewed those materials as well.

21 In addition, we have letters concerning a document
22 called the defense version of offense conduct. I have a letter
23 of May 4 in which defense counsel asks that the defense version
24 be submitted or joined to the PSR either in its body or as an
25 addendum. In response to that request, I issued an order, and

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1 I have two additional submissions from defense counsel today.
2 And I thank you, Mr. Kaley, for turning so promptly to these
3 issues. The two letters from defense counsel are May 6. And I
4 want to turn to the issues raised by the defense version and
5 those three letters in a moment.

6 I noticed that the PSR had what I believe is an error
7 in it in connection with the description of the defendant's
8 citizenship at the very front of the report, and again at
9 paragraph 164 it describes him as a U.S. citizen. I don't
10 believe he is, and I intend to instruct the probation
11 department to correct those errors.

12 Is there any objection to that?

13 MR. KALEY: He had been a United States citizen, your
14 Honor. He is no longer.

15 THE COURT: That's right, but the report reflects that
16 he currently is.

17 MR. KALEY: I understand.

18 THE COURT: So there is no objection to me asking for
19 that to be changed.

20 I want to put counsel on notice that when they address
21 me, I would like them to feel free to talk about the following
22 guidelines issue. I notice that the parties' plea agreement
23 and the PSR both do a guidelines calculation that includes a
24 third point for timely acceptance of responsibility. This has
25 no impact whatsoever on what would otherwise be a guidelines

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1 calculation, but I think the correct offense level is 42 and
2 not 41. There is agreement that the Criminal History Category
3 is II. I think Mr. Budovsky's plea on the Friday before a
4 Monday trial was not timely acceptance of responsibility. In
5 any event, you should feel free to discuss that with me when
6 you speak.

7 There is in this case a 20-year maximum sentence
8 provided by statute, and as a result, its theoretical issue at
9 most under either offense level 41 or 42, the guidelines range
10 would otherwise be 360 to life.

11 The government makes a reference in its submissions to
12 something called a petition for remission as opposed to a
13 restitution proceeding or order. I don't understand the legal
14 framework for a petition for remission. I don't know if the
15 90-day period that would ordinarily apply to resolving
16 restitution issues applies to a petition for remission. I
17 don't know what the statutory authority is for that to be part
18 of the sentence, and I'd like to hear from counsel on that
19 issue.

20 MR. EVERDELL: Thank you, your Honor. I may end up
21 turning this over to one of my colleagues who is more familiar
22 with the asset forfeiture issues.

23 But as I understand it, because the defendant pled to
24 a money-laundering offense, there are no direct victims of
25 money-laundering offenses for purposes of restitution. The

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1 victim of a money-laundering offense is society at large.
2 However, if you are a victim of the underlying crimes that the
3 laundered money relates to, then the forfeited assets, those
4 victims of those crimes can petition for remission and get a
5 share of the forfeited assets to make them whole.

6 That procedure of remission is different from
7 restitution. It is not a judicial proceeding, as I understand
8 it. I think it's something that's handled by our office. So I
9 don't know if the Court has much of a role in that, but I would
10 defer to one of my colleagues if the Court needs further
11 information.

12 THE COURT: I think you've given me the information I
13 need, which means I don't need to address this issue further.

14 MR. EVERDELL: That's correct, your Honor.

15 THE COURT: So let me turn then to the document
16 labeled defense version of the offense conduct. This is a
17 document that, as I understand it, the defense prepared as sort
18 of response to that section of the presentence report which was
19 drafted by the government, and as the PSR reflects, it's the
20 government's version of the offense. And what I did is compare
21 the defense version to the offense conduct version in the PSR,
22 which I'll refer to as the government's version, and try to
23 identify whether there were any disputes regarding facts that I
24 had to resolve either to correct the PSR or identify a Fatico
25 hearing potential.

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1 I identified 20 potential, I'll say broadly, disputes.
2 I thought, however, that only six of those could really be
3 considered fairly direct disputes with the precise wording and
4 meaning of the PSR. Most of the other issues were just
5 quibbles with facts or a gloss on facts or added facts or
6 suggesting that the PSR contained language or wording that
7 actually wasn't found there.

8 So I issued an order with respect to the six potential
9 issues that I needed to resolve for accuracy of the PSR and
10 invited defense counsel to identify any additional issues
11 beyond the six. Mr. Kaley was kind enough to do that. As a
12 result of his submissions today, my list of 20 has become a
13 list 23, and the bottom line from all of this is I think there
14 is only one issue that really requires our attention today.

15 I'm obviously happy to hear you about any of these
16 disputes or issues, but I think there is only one that requires
17 us to have some kind of detailed conversation. Mr. Kaley's
18 letters of today made it clear that the defendant doesn't
19 believe that his, I'll say, disputes are material, and he is
20 not requesting a Fatico hearing with respect to any of them.

21 The one issue that I think we need to discuss
22 addresses the PSR section at paragraphs 34 to 35, and the
23 defense version of the offense at page 16 which has to do with,
24 should I say, prior conduct. It concerns, in particular, the
25 501(c)(3) charity money-laundering fraud and the no-fault auto

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1 insurance fraud that took place during the period of time 2000
2 to 2003. In the PSR, it accuses or describes the defendant of
3 participating in those frauds with Mr. Kats, a co-conspirator.
4 In his defense version, he denied participating in those
5 schemes; and in the May 6 letter today, the defendant takes the
6 position that that dispute is not material. However, I think
7 it may be material on the issue of recidivism which defense
8 counsel have focused on appropriately in their sentencing
9 submission.

10 So let me put that aside for a moment because I think
11 that the bottom line is that I think that's the only one that
12 requires more discussion, although the parties are free to
13 discuss all the issues they'd like to today. But I just want
14 to list that the other 22 issues that I focused on, they had to
15 do with material found in the following PSR paragraphs: 16,
16 17, 19, 18, another one at 18, another one at 19, 21, 22,
17 another one at 21, 24, paragraphs 34 to 35, 38, 39, 49, 64, 69,
18 81, 82, 101, 124 and then added in today's letters from defense
19 counsel, PSR paragraph numbers 15, 87 and 110. Again, I am
20 prepared to go through each of the 23 disputes and talk about
21 them in detail, but the only one I think is necessary for us to
22 talk about is the one I've identified.

23 So before we focus on the one I've identified, let me
24 just ask, does the government wish to address any of the
25 potential or any of the factual disputes or potential factual

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1 disputes raised by the defense version?

2 MR. EVERDELL: No, your Honor. I think if the Court
3 wants to hear more about that one factual dispute, we'd be
4 prepared to do that today, but we do not feel it's necessary to
5 supplement the record any further as to the other disputes.

6 THE COURT: Thank you.

7 Mr. Kaley, other than the one factual dispute about
8 these prior fraudulent schemes which we'll get to in a moment,
9 does the defense feel the need to talk about any of the other
10 factual disputes or potential factual disputes between the
11 defense version and the PSR offense conduct version?

12 MR. KALEY: We will rely on our submissions, your
13 Honor. We think they are pretty thorough.

14 THE COURT: Good. Thank you. So let's turn to that.

15 I am not, by the way, making any changes to the PSR
16 description of offense conduct. I reviewed each of these
17 disputes with care. I don't find any changes warranted. I am
18 also not intending to order the probation department to attach
19 the defense version to the PSR. However, it would be, I think,
20 important that it be included, and I think it is in the record
21 of the defendant's sentencing submissions to this Court.
22 Obviously, there is some significant overlap between the
23 discussions of the underlying facts in the defendant's
24 memorandum submitted to me for sentence, but I think in
25 addition, the defense version which I've read with great care

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1 should be considered part of the record for this sentence, and
2 I've treated it, in essence, as an exhibit to the defense
3 memorandum of law. I think that's the proper way for it to be
4 considered by the Court.

5 MR. KALEY: I think also -- I'm sorry, your Honor. I
6 was going to add, I think also it was attached to my ECF letter
7 of May 4, so I think it is already part of the court record.

8 THE COURT: Thank you so much, Mr. Kaley.

9 Let's turn to the one outstanding issue. I understand
10 that the defendant is not asking for a Fatico hearing with
11 respect to these two prior frauds. Is the government asking
12 for a Fatico hearing?

13 MR. EVERDELL: No, your Honor.

14 THE COURT: So in terms of these two prior frauds, the
15 issue I think most significantly for sentence is whether I may
16 rely on them, and I think the way they are relevant is in
17 connection with the recidivism issue, and it would be my
18 intention to actually rely on them in that connection.

19 So, Mr. Kaley, if you want, consult with your client
20 and see if your position changes at all or if you just want to
21 address this in oral argument to me at the time you speak more
22 broadly.

23 MR. KALEY: May I have a moment, your Honor?

24 THE COURT: Sure.

25 (Pause)

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1 MR. KALEY: Your Honor, I am going to need another
2 moment or two. But just a preliminary problem, particularly
3 since the government is not asking for a Fatico hearing on this
4 issue. When we were here in connection I believe with the
5 letter that Mr. Budovsky had sent to your Honor and we came in
6 and towards the end of that conference there was some
7 discussion about the need for a Fatico hearing, and I don't
8 want to remember inaccurately what was said, but I certainly
9 was left with the impression that these earlier events would
10 increase perhaps, for lack of a better word, importance were
11 the parties not able to agree that Mr. Budovsky was a
12 full-fledged partner with Mr. Kats in Liberty Reserve from the
13 beginning.

14 I think with those thoughts in mind, the government
15 and the defense spent considerable time discussing facts and
16 the need for a hearing, and we settled upon the April 8 letter
17 which I thought had addressed that issue and made this issue of
18 the earlier 15-or-16-years-ago alleged frauds not important
19 because we don't contest -- and in fact just the opposite -- we
20 admit quite forthrightly that Mr. Budovsky was a full-fledged
21 partner in LR at the beginning. I think given that, that's why
22 the parties in the April 8 letter said we did not believe that
23 a Fatico hearing was necessary. I think that's our position
24 today, and we would ask your Honor not to consider it.

25 THE COURT: OK. Well, you know, it's important that I

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1 am forthright with you. There is a section of the defendant's
2 sentencing submission that makes an argument about recidivism.

3 MR. KALEY: Yes.

4 THE COURT: And to me that prior conduct, that course
5 of conduct, is relevant because of the defense argument about
6 recidivism, and I don't want to mislead you in that regard.

7 MR. KALEY: I understand, but I don't think there are
8 sufficient facts here for the Court to make a determination
9 that there was fraudulent conduct that Mr. Budovsky was a
10 knowing, willing participant in. And as that's the position
11 we're in now, perhaps -- I could say on the one hand the
12 government hasn't met its preponderance burden, but they're not
13 seeking a Fatico hearing. So, given where we are, I am not
14 sure there's adequate evidence for your Honor to make that
15 finding that Mr. Budovsky was a knowing and willing participant
16 in these activities. We don't have great details on how much
17 money was involved, how long any of this lasted, what happened,
18 who did what.

19 THE COURT: Well, of course, you -- I mean, I don't
20 have access to it, but you had access to the 3500 material and
21 all the government exhibits for trial. The government did
22 submit at least two documents about the fake charity, and I
23 referenced them in yesterday's order. And they are at tab 502
24 A and B to its sentencing submission in volume one, and that is
25 Mr. Budovsky's application for the 501(c)(3) exemption for the

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1 charity United Support for Humanity. And also the letter from
2 Mr. Budovsky signed by him as founder and chairman contained at
3 502B.

4 MR. KALEY: We see those, your Honor, but based on
5 these two documents, there's no adequate proof that there was a
6 fraud afoot. And based on that, I don't think there is
7 adequate evidence for your Honor to conclude that there was a
8 fraud there and that he knowingly participated in the fraud
9 based on these two documents. I think given that, your Honor
10 should not consider that.

11 THE COURT: Mr. Everdell.

12 MR. EVERDELL: Your Honor, there are actually a few
13 other documents that we included in our bound submissions that
14 we didn't feature in our sentencing submission which I'm happy
15 to walk the Court through now if that's useful.

16 I think our position is that we think the documents
17 alone do establish by a preponderance enough input for the
18 Court to rely on this in sentencing. To the extent the Court
19 doesn't feel that way, I guess we'd have to consider whether or
20 not we'd have to call Kats to the stand to flesh this out, but
21 I think the documents themselves are enough to go on.

22 THE COURT: Why don't you walk me through that then.

23 MR. EVERDELL: Yes, your Honor. I don't know if we
24 have that -- we don't. We will rely on the paper copy. I
25 thought we might have a projected copy, but that's fine.

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1 The Court I think already identified two of them. We
2 are now starting with the charity, and just so I'm clear, your
3 Honor, you identified the charity and the no-fault insurance as
4 the two you were interested in. We did make some allegations
5 about checks to his nephew Ruslan. I will not address those
6 since the Court has said these two are the ones.

7 THE COURT: I'm focused on the government's version of
8 the events in the PSR, and the description of that third scheme
9 focused even more on Mr. Kats rather than Mr. Budovsky though
10 it was in aid of Mr. Budovsky relative. So I am more focused
11 on Mr. Budovsky's conduct now, and that's why I focused on the
12 first two crimes.

13 MR. EVERDELL: Understood, your Honor.

14 So we will begin with the charity. The first document
15 there is the one the Court pointed out which is 502A, which is
16 the application the application for a 501(c)(3) designation for
17 the charity. You see in that document at the bottom of the
18 first page, Arthur Budovsky has signed it and is listed as the
19 director of the charity, and he's listed there as the director
20 in other places. 502B is the snapshot in time for United
21 Support for Humanity. At the bottom it's a letter that's on
22 the website that is signed by Arthur Budovsky as founder and
23 chairman.

24 A few other things here that I think are worth looking
25 at. You can read the text of the letter itself. I won't read

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1 it out loud for the Court now, but it just strikes me as if --
2 it reads as if it's almost a parody of a charity. It seems to
3 throw in every disadvantaged group that you could possibly
4 think about and it doesn't seem to me just at first blush
5 looking at this from an outside perspective to be the website
6 of a legitimate charity. They're talking about just everything
7 you can imagine that sounds terrible to the outside observer's
8 ears. I'm quoting now. "Struggling to improve the lives of
9 children who are suffering from birth defects, disease,
10 blindness" --

11 THE COURT: Slow down, counsel.

12 MR. EVERDELL: I'm sorry, your Honor.

13 "Struggling to improve the lives of children who are
14 struggling from birth defects, disease, blindness and poverty."
15 It mentions hospitals, orphanages, local medical centers,
16 clinics, etc. It goes on and on. It's a one-page letter and
17 there is really no needs to this at all. This is what's on the
18 website. It seems designed to elicit emotions, but there's
19 nothing behind it. There is more. I just don't want to have
20 the Court read into something that is on the page because there
21 is more.

22 If you look at 556A(f) --

23 THE COURT: Yes.

24 MR. EVERDELL: -- at that exhibit, you'll see examples
25 of checks that were written to United Support for Humanity

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1 purportedly for donations, but these are checks that were
2 found, and our argument is that these were part of the fraud.
3 They were given to charity so that they could then be cashed
4 out and delivered back to the donors "as cash."

5 Then you see on the next tab, which is 556B(f),
6 payments from this charity United Support for Humanity to Gold
7 Age -- Gold Age which from the other allegations the Court
8 knows is the exchanger that Budovsky and Kats were running at
9 that time -- an amount for \$3,500. So it seems odd that a
10 charity would be going through a Gold Age exchanger, sending
11 money to a Gold Age exchanger. If it's a legitimate charity,
12 that raises some questions. Other checks go to Kats himself
13 and to cash.

14 But the one that I think is probably the most
15 persuasive to me, your Honor, is the next one which is
16 Government Exhibits 557F. And in that one you see a chat
17 between Budovsky who uses the tag Seelen866.

18 MR. EVERDELL: Yes, Seelen866 is Budovsky. And
19 Ragnarok is Kats. This is a chat from April 13 of 2008 before
20 they're split. What they're talking about here is Kats
21 mentions at the top that he got a refund from Toyota for an
22 overpayment. This is a car that was actually used in
23 connection with the charity USH, right. So this is well after
24 USH stopped doing business, and all of a sudden he gets a
25 refund check related to the car. They talk about this for

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1 awhile. Then at the bottom they're talking about whether or
2 not they want to open a bank account so they can cash this
3 check and whether or not that's a good idea. You'll see on the
4 second page where Seelen -- oh, sorry, Ragnarok says, "Well,
5 bank account needed for USH in any event. I'll skip one."

6 And Seelen says, "For what?"

7 Ragnarok says, "For USH."

8 Seelen866 says, "For?"

9 And Ragnarok says, "Charity work."

10 And then there's a smiley face emoticon after that.

11 Now, to me looking at that, that is them talking
12 tongue-in-cheek with each other as if this "charity" really as
13 we both know was not a charity. This was just a scam, and
14 lucky for us isn't this interesting we got a refund check in
15 connection with a car that was used in relation to the charity,
16 and we can all have a good laugh about it afterwards about how
17 we were doing "charity work" smiley face when in fact we never
18 were. I think the tone of this chat is very clear. I think by
19 itself it establishes our allegations that this was not a
20 legitimate charity and that Budovsky knew that.

21 THE COURT: If there were a Fatico hearing, do you
22 have a proffer as to what testimony you would offer?

23 MR. EVERDELL: Your Honor, we debated about this
24 whether or not we would want to call Vladimir Kats to the stand
25 for this purpose to talk about these earlier frauds. I have no

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1 doubt that his testimony would be that this was a sham charity
2 that he and Budovsky initiated together in order to do exactly
3 what we allege in our sentencing submission, which is to
4 launder money or give people fake tax breaks for donations that
5 were in fact not donations and that they converted the
6 donations to cash, brought them back to the people who gave the
7 "donations" and they kept a percentage for themselves and the
8 "donors" would get a tax break when in fact they hadn't
9 actually given a donation.

10 So we did not think that given -- I know before the
11 Court said why it was that the Court now found this information
12 relevant to sentencing, but we did not think that additional
13 testimony on this subject was necessary, so we decided to just
14 rely on the documents because we think that establishes it
15 enough. But Kats has been consistent on this point with
16 respect to the charity that this was fabricated, they never did
17 any work in the Ukraine, and that this was designed as a way of
18 giving fake tax breaks to "donors" while they netted a fee in
19 exchange for giving the money back in cash.

20 THE COURT: Let's turn to the second one.

21 MR. EVERDELL: OK. That is the no-fault insurance,
22 and I think the evidence there that we've provided to the Court
23 you can see at 554A(f).

24 In this exhibit you will see a number of checks that
25 were written to a company called ECSN, Incorporated, which is a

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1 company that was run by Budovsky. It stands for Express
2 Computer Services Network. It was one of the companies he ran
3 at this time. You'll see that the checks are written from
4 medical offices or chiropractor offices. I think on the first
5 page you can see it says I think Tristate Acupuncture, but the
6 word acupuncture is visible. These all come from these medical
7 offices or chiropractor offices or some sort of treatment
8 office that was participating in the no-fault scheme.

9 The way it worked as we allege was that these offices
10 were submitting fake Medicare claims and they needed to pay off
11 the people who were complicit in filing the fake claims, but
12 they didn't want to remove a whole bunch of cash from their own
13 medical office accounts or personal accounts that might attract
14 suspicion, so instead Budovsky and Kats did it for them. They
15 transferred the money, they gave them a check which purportedly
16 looks like it's for real computer services, like computer tech
17 functions or other functions as though they looked like
18 legitimate charges. In fact, they were for the purpose of --
19 they gave that money to Kats and Budovsky so that they could
20 then convert it to cash and bring it back to the doctors'
21 offices so the doctors and chiropractors could pay off the
22 purported patients for their role in the fraud.

23 THE COURT: Where am I supposed to be looking at the
24 document? The documents I see are checked "signed by Budovsky.
25 Paid to the order of Budovsky."

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1 MR. EVERDELL: I'm sorry, your Honor. I think you may
2 be looking at the next one. The one I'm looking at is 554A(f).
3 Maybe you're looking at 554B(f).

4 THE COURT: I'm looking at 554A(f).

5 MR. EVERDELL: Perhaps you have a wrongly bound copy.
6 The first page of my exhibit for me are two checks, LL
7 Compensation, Inc. written to ECSN.

8 THE COURT: No.

9 MR. EVERDELL: I'm sorry, your Honor, it may be that
10 we just bound a copy. Your Honor, I have some notes in front
11 of me about what the checks are so I can provide the Court with
12 my bound copy. Your Honor, I'm sorry, we do have them
13 electronically, so if the Court's monitor is linked here --

14 THE COURT: As long as you show it to defense counsel
15 too.

16 MR. EVERDELL: I believe their copy has the correct
17 documents.

18 MS. NEWMAN: Our copy seems to coordinate with the
19 government's bound version. So if this helps you, this is what
20 you gave us.

21 THE COURT: We can't put it on the monitor.

22 MR. EVERDELL: I do have a disk that has it as well.

23 THE COURT: I can't put it on the monitor. Our
24 monitors, for whatever reason, very helpfully are not
25 functioning.

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1 MR. EVERDELL: I can provide the Court with my own
2 copy, and I will work from my notes. I apologize for the bound
3 copy not being complete, your Honor.

4 Your Honor, referring back now to the Government's
5 Exhibit 554A(f), I actually have the electronic copy in front
6 of me. Should I proceed?

7 THE COURT: Yes.

8 MR. EVERDELL: You will see in that exhibit a number
9 of checks that are written from medical providers.

10 THE COURT: I'm returning the government's volume.
11 Chambers received two volumes. One must have been a corrected
12 volume. I have the volume, and I'm at 554A(f).

13 MR. EVERDELL: Thank you, your Honor. So if you look
14 at that exhibit.

15 THE COURT: I remember what you said.

16 MR. EVERDELL: Yes. You will see the checks from the
17 medical providers to ECSN, which is Budovsky's company. There
18 are a number of them paying Budovsky to then cash them out and
19 then provide the cash back to them.

20 One thing to note about this is the amounts. They're
21 in the thousands of dollars. These are not very large medical
22 providers purportedly paying a computer tech thousands of
23 dollars for computer work being done in a very small office.
24 The amounts do not comport with that sort of service Budovsky
25 working on his own providing tech support to a small medical

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1 office would actually receive for that work. These are
2 thousands and thousands of dollars over not a very extensive
3 time frame coming into Budovsky's computer company. It doesn't
4 really fit, we believe, with -- and certainly doesn't fit with
5 what we were told by Mr. Kats, but doesn't fit on its face with
6 a small computer company and the services they'd be able to
7 provide and the amount of money they'd be able to reap for
8 those services.

9 If you look also at 554B(f), you will see the next
10 stage in the process, which are ECSN checks, checks written
11 from that company's bank account to Budovsky himself in, again,
12 amounts in the thousands. These are checks that are written
13 for the purposes of Budovsky being able to cash them and then
14 return the cash to the medical clinics for them to do with it
15 to complete the fraud scheme and pay off the fake patients.
16 There are a number of them, and they are in large amounts.
17 Again, it doesn't seem very consistent with legitimate computer
18 work. In our view it is consistent with participating in a
19 no-fault conspiracy.

20 And to your point before, your Honor, if Mr. Kats were
21 called to the stand, he would say the same thing; that this was
22 a no-fault scheme that both Budovsky and Kats were aware of.
23 In fact, they both went together often to deliver the cash back
24 to the medical clinics. In fact, Kats would say that the whole
25 reason why they knew about this in the first place was because

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1 Budovsky had done tech work for some of these companies in the
2 past and that was their in. Kats, I don't think, was aware of
3 or had relationships with these people. I would have to check
4 that before I say that definitively, but I believe what I
5 recall is that it was Budovsky's relationships with these
6 medical providers that provided the in that allowed the scheme
7 to take place

8 THE COURT: Thank you.

9 Mr. Kaley.

10 MR. KALEY: Your Honor, Ms. Newman will address this.

11 THE COURT: Ms. Newman.

12 MS. NEWMAN: Thank you very much, your Honor, for
13 allowing us to split.

14 Your Honor, we may go a little bit backwards. Since
15 your Honor has before you the evidence the government has
16 offered with respect to the no-fault checks, we'll address that
17 first and then go to the charity since it's opened already.

18 So the first that we would be looking at with respect
19 to what they call the no-fault money-laundering scheme would be
20 the Exhibit 554A(f). What we see are various companies, and
21 they admit that they're medical-related facilities which our
22 addressed to ECSN, Inc. which we concede was Mr. Budovsky's
23 company for doing computer work. There are several such checks
24 over a period of time and they are for, in my humble opinion,
25 having dealt with IT outsourcing, not particularly large, even

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1 for a small firm, but that's beside the point. They are not
2 for tens of thousands of dollars, we can agree, but for a few
3 thousand and most -- from a thousand, I believe, to \$3,000 at
4 the most for seniors which we say are for services rendered.

5 In fact, if we look at 554B(f), the next tab, we see
6 that on a company check, Arthur Budovsky is writing a check to
7 himself. And in several of those -- I'm going to direct the
8 Court, for example, to page 8. There's a small number at the
9 bottom of the exhibit pages in the line, the bottom line, the
10 reference line, it says August.

11 We go to page 11. That is a check, it's a copy of a
12 check. And we go to the reference line, it says salary.

13 If we go to page 12, it gets more specific. Salary
14 for July 18 through August 29.

15 Page 13, it says a bonus. And while not all of them
16 have that, it's -- I know that sometimes not everybody puts
17 that in but it's sufficient to say that there is evidence here
18 of what those checks were written for, and they are signed by
19 Arthur Budovsky. So what we have as far as evidence is we have
20 checks written to Mr. Budovsky's computer company, and then we
21 have checks written from his checking account, company checking
22 account to himself for his salary. In addition, to further
23 corroborate that work was done, we have in our sentencing
24 submission under tab one, it's actually the last letter.

25 So if we go to tab two, it's the one right before

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1 that, just for convenience sake. You will see a letter that
2 was submitted on behalf of Mr. Budovsky from Dr. Cariton, who,
3 by the way, happens to be in the audience here today in support
4 of Mr. Budovsky, along with family and relatives and his mother
5 and stepfather. We forgot to introduce them, but I think it is
6 important for the Court to know who is here on his behalf. I
7 know the Court wants to know that.

8 A March 18, 2016 letter does indicate that in the
9 second paragraph, if I may read, "I first met Arthur in 2001
10 when he was helping me with setting up a computer network in my
11 office after renovation." So not only do we have the flow of
12 the evidence, but we have here support of what exactly the
13 payments were for.

14 And we do have chats, and I can find them, in which
15 Mr. Budovsky -- excuse me -- Mr. Kats in chats with others
16 tells other people that Mr. Budovsky was the tech guy, and if
17 it wasn't for him, in fact, that's what he would still be doing
18 was, you know, fixing computers. So we even have from
19 Mr. Kats's own words at the time contemporaneously -- not with
20 this event, but with the offense conduct, that that's what
21 Mr. Budovsky did and was paid for it.

22 THE COURT: This is very helpful, Ms. Newman. As I
23 understand it then with respect to the medical fraud scheme as
24 alleged by the government, you've walked through the physical
25 evidence, and based on that, without Mr. Kats's testimony, I

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1 would not be able to find that the government has carried its
2 burden of proof that this was a fraud. And as I understand it,
3 Mr. Budovsky denies involvement in any medical office fraud in
4 connection with these documents. Is that right?

5 MS. NEWMAN: That is correct, your Honor.

6 THE COURT: We can move then to the first date.

7 MS. NEWMAN: Thank you very much. That would be the
8 charity and they directed you, if I'm correct, to 502B. If I
9 can just find that. It was 502B and then the corporate
10 documents. Well, we do not deny and certainly we have not
11 denied that -- we knew of the charity, we absolutely
12 acknowledge that Mr. Budovsky knew of the charity, absolutely
13 acknowledges that, and that he signed the corporate documents.
14 He's not saying that the documents themselves are fraudulent.
15 So I wanted that here for the Court.

16 However, the question is not whether Mr. Budovsky
17 signed a corporate document and knew of this United Support for
18 Humanity, but rather whether he engaged or knew of and agreed
19 to Mr. Kats's engagement in any kind of fraud or if there was
20 fraud with respect to this charity.

21 So the next document that they have directed the Court
22 to is 502, and they say by looking at 502B that the Court
23 clearly would know that this is a fraud because, after all,
24 they're asking for charity for so many different ailments to a
25 group of people. But to Mr. Budovsky's recollection, this

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1 charity began soon after Chernobyl, or around that time.
2 That's what his recollection is. It's been quite a number of
3 years. In any event, even besides that, if his recollection is
4 not correct, what is correct is that in and of themselves they
5 asked for help for so many different ailments, and for a very
6 poor country doesn't mean it's a fraud, your Honor. That's
7 really speculation.

8 We then had, I think they directed you to 556B(f)
9 which were checks, if I recall. Those were checks from the
10 checking account of United Support for Humanity. If you look
11 at those checks carefully, you see they're all signed by
12 Mr. Kats. There's no numbers on those pages, but if we turn
13 the first page on the back, assuming that would be page 2 of
14 that exhibit, in fact this one is made up to Mr. Kats's mother.
15 Some of them are not clear. I understand it's hard it's hard.

16 THE COURT: I'll take your representation, counsel.
17 You can move along.

18 MS. NEWMAN: So what we're saying is what the
19 government has proposed, even the documents do not support even
20 by a preponderance a finding that Mr. Budovsky was engaged in
21 the kind of fraud involved in that charity that the government
22 alleged existed.

23 THE COURT: And he's denying he was involved in a
24 fraud.

25 MS. NEWMAN: Yes, he's not denying though that he knew

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1 of the charity. So I wanted that clear.

2 Thank you, your Honor. Unless there's any other
3 questions, thank you.

4 THE COURT: No. So I am not going to rely on either
5 of these prior instances of alleged fraudulent activity in
6 sentencing the defendant unless the government wishes to put on
7 further evidence.

8 MR. EVERDELL: May we have a moment, your Honor.

9 (Pause)

10 MR. EVERDELL: Your Honor, we are going to not choose
11 to supplement the record, although we will highlight the fact
12 that even if the Court does not choose to rely on this earlier
13 evidence of money laundering and fraud, there are other things
14 in the record to rely on in terms of recidivism.

15 THE COURT: Absolutely, you are right to make any
16 other arguments you wish from the record.

17 MR. EVERDELL: Yes, your Honor.

18 THE COURT: Thank you, counsel, for helping clarify
19 these issues. So I think we are ready to proceed then with the
20 core issues at sentence having, I think, clarified what's in
21 the record and what's out. The principal arguments being made
22 by the defense in connection with a non-guideline sentence
23 here -- the guideline sentence being 20 years, and that is the
24 sentence recommended by the probation department as well -- the
25 defendant's age, the likelihood he will be deported, his

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1 mother's health condition, his own health condition, the
2 sentences I've imposed on co-conspirators, among many other
3 things. There are some legal arguments as well.
4 Fundamentally, the defendant seeks a sentence of ten years
5 imprisonment. He's been in custody in connection with these
6 charges since May 24, 2013, and he also argues -- and we'll get
7 to this legal issue later, I think -- that, in any event, it
8 would be inappropriate for me to impose a sentence of more than
9 15 years. So, I think I've captured the range that defense
10 counsel wishes me to focus on.

11 Thank you, Ms. Newman. Moving a computer screen so
12 she and I can see each other, which is helpful.

13 I think I'm ready to hear from counsel. So I will
14 hear from the government.

15 MR. EVERDELL: Thank you, your Honor.

16 As the Court I know is aware, the government has set
17 forth a number of arguments in a very lengthy sentencing
18 submission, so I'm not going to try to repeat everything that
19 was said in the submission, but I do want to make a few points
20 for the Court.

21 First, your Honor, as I know the Court is aware, this
22 case involves a money-laundering enterprise of unprecedented
23 size and scope. At its height, Liberty Reserve, which was the
24 digital currency company that billed itself as the internet's
25 largest payment processor and money transfer system, was in

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1 fact a massive criminal operation that laundered billions of
2 dollars for online criminals around the world, including
3 hundreds of millions of dollars for users based in the United
4 States.

5 This defendant, Arthur Budovsky, was at the helm of
6 this sweeping criminal enterprise. He was its cofounder, its
7 leader, and its principal beneficial owner. Liberty Reserve
8 was Budovsky's organization. He helped design its features and
9 shrouded it in anonymity to appeal to online criminals like
10 online Ponzi schemers, credit card traffickers, identity
11 thieves and computer hackers, and Budovsky marketed Liberty
12 Reserve's services directly to these online criminals knowing
13 that the vast majority of Liberty Reserve's proceeds would come
14 from this criminal clientele.

15 And he was right. Online fraudsters and cyber
16 criminals around the world flocked to Liberty Reserve and it
17 ultimately grew into a financial hub for these criminals who
18 used it to amass and distribute and store and launder their
19 criminal proceeds, and to keep this all hidden from law
20 enforcement and to keep himself out of the reach of U.S. law
21 enforcement in particular, he engaged in a pattern of repeated
22 deception and obfuscation to make sure that law enforcement
23 authorities in the United States would have no reach over him
24 and law enforcement authorities and regulators in Costa Rica
25 would have no idea what was going on beneath the surface of

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1 this purportedly legitimate company that was operating on their
2 shores.

3 The size and the scope of this crime, your Honor, and
4 the defendant's leadership role in the offense demand a
5 significant sentence on those factors alone. We've set forth
6 in great detail in our sentencing submission how this company,
7 Liberty Reserve, came into being and how it grew and how
8 Budovsky was the central player in the life span of this
9 enterprise from beginning to end. We will not reiterate them
10 here, but those facts alone show that Budovsky was responsible
11 for an incredibly serious crime and should be sentenced to the
12 guidelines range of 20 years in prison, and we note your Honor
13 that this assessment is shared by the probation department in
14 its recommendation in the PSR.

15 Aside from the nature of this offense, the scope, the
16 size and what the defendant did, his role in it as its leader,
17 there are other reasons, other very important and very
18 concerning reasons that lead the government to believe that a
19 guideline sentence is appropriate in this case.

20 First -- and the Court touched upon this before in our
21 discussion of the factual disputes -- Mr. Budovsky is a proven
22 recidivist. We know, and it is not disputed, that before
23 Liberty Reserve was launched, he was engaged in an exchanger
24 business, Gold Age, to exchange currency for E-Gold which was
25 one of the dominant digital currencies of the time. He did

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1 that with Mr. Kats. While he was doing this, we know at the
2 end of that venture they were both arrested, and they were
3 brought up on charges. And Mr. Budovsky, like Mr. Kats, had to
4 plead guilty to running an unlicensed money transmitting
5 business in 2006, and then he was sentenced in 2007.

6 But rather than turning away from a life of crime at
7 that point, rather than learning his lesson, and I believe,
8 your Honor, that even in the defendant's submission he says
9 he's learned his lesson, well, it seems like he's been given
10 this choice to learn a lesson before, and he didn't learn the
11 lesson. Rather than turning away from a life of crime which
12 he'd been engaged in for several years and which provided his
13 main source of income, he went head-long right back into it
14 immediately after being arrested. He and Kats launched Liberty
15 Reserve and that became their primary focus and the other
16 associated businesses, the exchanger businesses that they
17 worked on together after that. He did not learn from that
18 experience. Not only did he return to the same type of
19 money-laundering enterprise that had gotten him in trouble
20 before, he took every step that he could to insulate himself
21 from the reach of law enforcement so that he wouldn't get
22 caught again.

23 He moved Liberty Reserve to Costa Rica so it would be
24 outside the reach of law enforcement. He incorporated the
25 company using nominee owners and nominee bank accounts so that

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1 the money could flow into accounts that did not have his name
2 on it at all so that he was insulated from that. Even the
3 Liberty Reserve website bragged about the fact that it was
4 beyond the scope of U.S. jurisdiction. While other payment
5 processors could be got at by U.S. jurisdiction, we could not.

6 So he did all this as part of a pattern to hide his
7 criminal involvement in the company, and that pattern extended
8 during his running of the company in his repeated misdirection
9 and lies to the regulatory authorities in Costa Rica, to Sugef
10 and others, where he intentionally provided them with false
11 data and withheld information about the criminal clientele.
12 This was part of a criminal pattern. So instead of turning
13 away from a life of crime, he decided he needed to get better
14 at it, and that was the lesson that he learned.

15 Now he's caught again. There is every reason to
16 believe, regrettably, if he gets out, he might return to this
17 life of crime like he's done at least on one occasion before,
18 and that gives the government serious concern. It demands that
19 the sentence reflect the need for deterrence in this case
20 because there is an extraordinary need for deterrence in this
21 case given the defendant's background. And I note, your Honor,
22 it's not simply that he returned after being caught once to a
23 life of crime, but this type of business has been this
24 defendant's principal source of income for years. There is a
25 need for incapacitation as well. There is reason to believe

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1 that he would return to this because this is what he knows,
2 this is what he knows and this is what he does, and that
3 society would once again suffer from the crimes of this
4 defendant if he is not given a very significant sentence, a
5 guideline sentence of 20 years.

6 Lastly, your Honor, I will add that there is another
7 very prevalent reason in the submissions in particular that
8 give the government real concern about the defendant, and we've
9 outlined that in our own submission, but it seems to be that at
10 multiple points in this process, the defendant has tried to
11 minimize his conduct and minimize his role and has not owned up
12 to the full scope of his conduct. The Court I'm sure recalls
13 the lengthy back-and-forth that ultimately led to the April 8
14 letter where the defendant made those admissions on the record,
15 but it wasn't a smooth process. There was a lot of
16 back-and-forth. There was a letter sent to the Court which
17 gave the government, and I think the Court, some concern about
18 what was going through the defendant's head. Ultimately, he
19 did admit to those facts that are in the April 8 letter and
20 those formed the core conduct of this case.

21 Then the sentencing submission comes, and as the
22 government I think rightly points out in our own submission,
23 there is a pattern there of while nominally adhering to the
24 admissions, trying to walk back, at least the spirit of those
25 admissions, if not the letter. Trying to point to other people

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1 and trying to almost blame everybody else besides himself.

2 That is not acceptable, your Honor. That speaks
3 volumes about the level of contrition of this defendant and
4 whether or not he really is going to learn from this experience
5 and turn away from a life of crime. And it's that blaming
6 others that I think is particularly bad in this context because
7 it's not like he's just blaming his co-conspirator -- we saw a
8 lot of that in his submission, blaming Kats, but he was blaming
9 the victims as well. He was blaming those investors in the
10 HYIP schemes that got burned by investing in fraud schemes
11 trying to claim that at least the government's witness, Eric
12 Boateng, was actually a savvy investor; that he was part of the
13 fraud, he was complicit in it because he was trying to get in
14 and out early to make a quick buck.

15 You say you've read those letters, your Honor, and I'm
16 sure you noticed, as did the government when we read them,
17 these are really terrible stories of people who were just lured
18 by the prospect of outsized returns. They knew they shouldn't
19 have believed it, but they did because they were in some dire
20 straits of their own, but they did it and they paid a heavy
21 price for it. And it was Liberty Reserve that made that all
22 possible. It made the HYIP's function, it was the digital
23 currency of choice while it was up and running among these type
24 of online fraudsters, and that had devastating consequences,
25 lots of victims who now have lost significant sums that are

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1 really meaningful to these people. You've had some examples
2 that we've quoted in our own submission but more than just
3 those. His lack of remorse, and even his lack -- he doesn't
4 even seem to acknowledge that there are real victims in this
5 case that are suffering because of what he did. That is
6 another reason, a very strong and powerful reason, your Honor,
7 that we think that a guideline sentence in this case is
8 appropriate.

9 One moment, your Honor.

10 (Pause)

11 Unless the Court would like to address any of legal
12 arguments with the government, I think we rely on our papers
13 for that, but we have no further comment. Thank you.

14 MR. KALEY: May I have a moment, your Honor?

15 THE COURT: Yes.

16 (Pause)

17 MR. KALEY: Thank you, your Honor.

18 So perhaps where I will start, your Honor, is towards
19 where Mr. Everdell ended. You know, we talk about remorse or
20 lack of remorse. I mean, to me, remorse has been exhibited
21 here. A person doesn't have to get down and prostrate
22 themselves on the ground. I mean, we have remorse here. We
23 have a guilty plea with an exposure of 20 years, an acceptance
24 of responsibility for that, we have the April 8 letter which is
25 a full admission of the conduct at issue here, the core conduct

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1 at issue here. There's no walking away. Sure, Mr. Everdell
2 and I had discussions before we arrived at the final product
3 because we're both lawyers and we're both trying to do our
4 best, but this April 8 letter says it all. We're not walking
5 away from the magnitude of what happened here, and to suggest
6 that we are, we think is just wrong.

7 Now, we're also not insensitive to folks who lost
8 money. I will only add that they lost money to frauds outside
9 of Liberty Reserve, these various Ponzi schemes and other
10 fraudsters. We weren't intending to pick on Mr. Boateng in our
11 submission, but we just thought it was fair to point out that
12 Mr. Boateng when he invested in the HYIP knew exactly what he
13 was doing, and at one point I think he used another name or
14 another payment method or something. I don't recall the exact
15 details, but it's in our submission. So he had some sense. It
16 reminded me of what my parents told me: If it's too good to be
17 true, it's probably not true. And that was the only reason why
18 we pointed that out. Of all the victims that the government
19 had thought they might call at trial, Boateng was the only one,
20 and we just thought that in fairness, a little bit about
21 Mr. Boateng was not inappropriate, but there is no effort on
22 our part to minimize what we've agreed to as the conduct here.

23 THE COURT: So, the discussion of Mr. Boateng, and
24 indeed the discussion of the other victims more generically in
25 the defense submissions, should not be read by me as an

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1 argument or a suggesting that the defendant doesn't realize
2 that real people lost money that was very important to them
3 through fraud.

4 MR. KALEY: Of course we realize that, your Honor.

5 THE COURT: There's no debate that there were real
6 victims here who lost collectively enormous sums of money to
7 fraud.

8 MR. KALEY: I don't know how much they lost, your
9 Honor, but it's clear --

10 THE COURT: Millions and millions of dollars.

11 MR. KALEY: I've read the victim letters. Those
12 people lost money, there's no question about it. We've never
13 disputed that those people lost money. We were never intending
14 to dispute that those people lost money, but the only point I
15 was making is that I understand that Liberty Reserve allowed
16 these Ponzi schemes to launder the money. We never said
17 anything other than that. But I just thought in fairness,
18 particularly regarding Mr. Boateng, who was the one that came
19 to our attention, he may have been in dire straits, I don't
20 know, but he entered this somewhat with his eyes open. Now, of
21 course the existence of Liberty enabled the fraudster to
22 launder the money through Liberty, and Mr. Boateng lost his
23 money, no question about it. But we do realize Mr. Boateng is
24 a victim of what happened here. We're not denying that at all.
25 So we are not trying to minimize what Mr. Budovsky did and what

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1 happened. The question really becomes what is an appropriate
2 sentence.

3 Our submission, we thought, tried to put in a little
4 more context of what happened here. We never denied that
5 Mr. Budovsky was a 50 percent owner; that they strategized;
6 that they discussed everything, but there was certain
7 realities, the government calls it Mr. Kats's bluffing, but by
8 the same token, these were things that Mr. Kats said, and that
9 it was, you know, Mr. Budovsky would be --

10 THE COURT: You're talking about the statement that
11 Mr. Kats said in chat rooms after or in chats after
12 Mr. Budovsky kicked him out of Liberty Reserve?

13 MR. KALEY: Yes.

14 THE COURT: Those are the statements you're talking
15 about?

16 MR. KALEY: Yes, your Honor.

17 THE COURT: OK.

18 MR. KALEY: But we just thought it was important to
19 include those because it added some context to what we think
20 happened, but it's not a walk-back from what we agreed to in
21 the April 8 letter, what Mr. Budovsky pled guilty to and what
22 he said during his allocation. So I don't think we're
23 minimizing at all the core criminal conduct. Do we have some
24 issues perhaps around some of the edges? Sure. But that's
25 going to happen, but it's not at all that we are minimizing

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1 what happened here.

2 The question, as I said, then becomes what becomes an
3 appropriate sentence in this particular case. The government
4 says 20 years. We say something less than 20 years. We think
5 that it should be less than 15 years. That doesn't mean it
6 shouldn't be a substantial sentence. So what substantial
7 sentence is sufficient here to satisfy all the reasons of why
8 we sentence people?

9 Now the government says, well, one of the things we've
10 got to do is make sure that Mr. Budovsky doesn't become a
11 recidivist again. We acknowledge the Gold Age conviction. I
12 will only point out in connection with Gold Age, Mr. Budovsky
13 received a sentence of probation. Now he's looking at a whole
14 different situation. He's looking at a very substantial
15 sentence. If the Court imposes a substantial sentence along
16 the lines that we've suggested, that's going to alter a
17 person's outlook on life, and if your Honor were to impose a
18 substantial sentence but one less than 15 years, that's a very
19 substantial sentence.

20 Mr. Budovsky has never spent that time in prison. He
21 will be spending it now. He will be deterred specifically to
22 himself. Other people who may engage in digital money
23 laundering also will be deterred because this will be a
24 substantial sentence. My recollection of looking at the Gold
25 Age sentences -- not the Gold Age -- the E-Gold sentences were

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1 most of those folks received sentences of probation; but a
2 sentence to Mr. Marmilev of five years, to Mr. Chukharev of
3 three years and the sentence of whatever your Honor gives
4 Mr. Budovsky, we hope under 15 years, is still a very
5 substantial sentence.

6 I think that sometimes we can get lost in the offense.
7 There's no question this is a serious offense, but we can't
8 lose sight of the humanity of people, and I think here there is
9 a good deal of humanity in Mr. Budovsky. Your Honor has seen
10 the letters. They're very nice letters, heart-felt from people
11 who've known him for years. I pointed to one or two in
12 particular that just struck me, and it was the young boy in the
13 Ukraine who needed surgery that Mr. Budovsky paid for and was
14 there when the young boy woke up from the surgery. I mean, it
15 was a touching letter. The boy's mother's letter was equally
16 touching. I say that because the narrative of Mr. Budovsky's
17 life is not just the crime. There's much more to it than that.
18 It's just simple human acts of kindness that people exhibit in
19 everyday life that are reflected in Mr. Budovsky's letters that
20 were submitted on his behalf. He's not an animal. He's not
21 evil. He committed a serious crime. But now what is enough?
22 A double digit sentence less than 15 years would be very much.
23 It's not a walk in the park. It has a deterring effect both on
24 the individual and on the society at large. It's substantial.
25 People will know. I guess I get upset to just ignore a

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1 person's humanity.

2 I kind of was anticipating somewhat the government's
3 sentencing submission for Mr. Kats, which I read of course
4 because I was curious, and I read the government's submission
5 on Mr. Kats, and it was kind of done in a monotone, without
6 some of the gloss that we saw in their sentencing memo for
7 Mr. Budovsky. Mr. Kats isn't being sentenced now. He'll get
8 sentenced whenever, but here is my observation: The government
9 spent a lot of time with Mr. Kats in preparing him, meeting
10 with him, proffers. When you do that, you get a bit of a
11 window into a person. You see some of their humanity which you
12 otherwise don't see. I've spent enormous amounts of time with
13 Mr. Budovsky, as has my co-counsel, and because of that we also
14 are able to see his humanity. So we don't have the window into
15 Mr. Kats's humanity because we don't know him. All we know is
16 that he was involved in this case, Gold Age and he's got some
17 child pornography stuff, but we have never looked into
18 Mr. Kats's soul. We've never met him. So we can't say
19 anything about him other than what we've read.

20 It's the same thing with Mr. Budovsky. The government
21 doesn't know Mr. Budovsky other than the crime, but we've had
22 an opportunity to know him and we see humanity there, your
23 Honor, and he's continued that in the jail over at the MCC. We
24 submitted the paperwork from the MCC. He's a suicide watch
25 companion and he counsels other inmates. The director of the

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1 Bureau of Prisons wrote a letter saying this is noble and
2 terrific service, and he didn't have to do that. He could just
3 sit there in his cell and cubical and read a book and be left
4 alone, but he didn't. So that also is a window inside him
5 beyond just the offense conduct.

6 So when we talk about what is a just sentence here, we
7 take into account the prospect of recidivism. We've briefed
8 that point, your Honor. I'm not going to belabor it terribly,
9 but a substantial sentence here for Mr. Budovsky, as I said,
10 will prevent recidivism. I mean, he's going to come out of
11 prison, he is going to -- I don't know where he'll be. He's
12 not a citizen here. He won't be here. He may be sent back to
13 Costa Rica where he has no family, and it's potentially
14 possible, I guess, that he might be sent to the Ukraine if they
15 would accept him. I don't know. But his parents who have been
16 with him are here. All the folks in court who wrote letters
17 and are here. They're here. He's not going to be, and that's
18 important because he will survive, I'm sure, but the one thing
19 I have confidence of, and the government may say, well, in Gold
20 Age, he just got a slap on the wrist and look what he did after
21 Gold Age. But what I say is, OK, he got a slap on the wrist
22 with Gold Age, but what's going to happen to him here is going
23 to be different, and that's going to matter, and the result
24 will be different. So, if he got a double digit sentence less
25 than 15 years, he's going to come out at the age of 54, 55.

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1 The world is going to be an entirely different place, and he's
2 going to know that he can't do what he had done before or the
3 rest of his life is over. And I think that's important. So,
4 when we look at the potential for future recidivism, I don't
5 see it because I think the sentence the Court will impose will
6 address that.

7 A lot of the other points about insulating himself
8 your Honor, we don't deny a lot of that. It was operating in
9 Costa Rica. These are facts. These are things we acknowledge.
10 There are some other things though we thought were on the
11 positive side. Like there was really no reason to apply to
12 SUGEF for a license. As I look back, it was silly, but it was
13 what was done, and the government's not wrong when they say
14 SUGEF wasn't given all of the information, but I would say
15 there was some effort to do some things right, but there was
16 more of an effort to do things wrong. We are not, as I said,
17 walking away from our April 8 letter. He never got it right.
18 He intentionally allowed it and didn't get it right and did it,
19 so we're here.

20 But now what happens? We've set forth a lot of
21 reasons in our submission, and I'm not going to repeat all of
22 those, your Honor. Just essentially, a double digit sentence
23 less than 15 years is quite, quite substantial and will have a
24 dramatic impact on Mr. Budovsky as well as on other people out
25 in the community who may consider doing something.

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1 Let me just confer and see if there are any other
2 thoughts, your Honor.

3 (Pause)

4 Thank you, your Honor.

5 THE COURT: Mr. Budovsky, is there anything that you
6 would like to say to me on your behalf in connection with this
7 sentence?

8 THE DEFENDANT: No, your Honor.

9 THE COURT: OK. You may be seated.

10 Well, of course, there is no dispute about some
11 critical facts here that give context to this sentence. The
12 defendant ran an extraordinarily successful and large-scale
13 international money-laundering operation. It was designed to
14 be used by cyber criminals, and it was, to hide and move their
15 ill-gotten gains. It was designed to appeal to them, and it
16 did. It was successful in capturing a very significant share
17 of this international business. There were over 78 million
18 financial transactions processed by Liberty Reserve. The
19 combined value was over \$8 billion. This money laundering for
20 criminal activity had a huge U.S. footprint. The parties have
21 agreed that at least a quarter of a billion dollars in criminal
22 proceeds from user accounts based in the United States went
23 through the Liberty Reserve system.

24 Defendant and Mr. Kats conceived of this whole scheme.
25 It began as operations in 2005. Shortly after the operations

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1 were moved to Costa Rica in 2008, the defendant forced Mr. Kats
2 out, and he was in charge by himself running the operation.
3 Obviously, he had a staff and people who he employed who he
4 used in various ways in running the group, but he was the
5 master of the operation from that point on until it was shut
6 down by the government in 2013. I want to address some of the
7 defendant's arguments that it made in its sentencing submission
8 here. Let me address some of the legal arguments first.

9 There was an argument that the parties have made with
10 respect to the guidelines contained in Section 2B1.1, and the
11 defendant asked me to disregard that guideline, and I think
12 there is absolutely no reason to do so here. The point of this
13 entire money-laundering scheme, this entire overarching fraud
14 that empowered, enabled, facilitated other fraudsters around
15 the world, the volume of the fraud in capturing as much of a
16 market share as possible of these world-wide networks of
17 fraudsters, that was the whole purpose of the scheme. It was
18 all designed and oriented to be a successful, huge financial
19 operation. The scale of it was its point. So to the extent
20 the guidelines capture the scale, they do so appropriately.

21 Of course, the footprint just in the United States was
22 enormous. So to the extent that it's appropriate for me to
23 just look at the United States and the fraud that was promoted
24 and facilitated here through the defendant's activities, I
25 don't think it is inappropriate at all to apply 2B1.1. I think

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1 in this case, looking at this crime and these facts, and the
2 defendant's role in it, looking at the extent of lives
3 impacted, destroyed, changed forever, the lost savings, the
4 lost retirement funds, the emotional distress, the loss of
5 self-respect, the recriminations, the strain in family life,
6 they're all appropriately captured, I think, through this
7 guidelines application.

8 Another argument that the defendant makes is that
9 whatever sentence I impose should be no greater than 15 years
10 because of the history of plea negotiations here. I don't
11 think the defendant is right at all in connection with this
12 legal argument. As we all know, a Court is not involved in
13 plea negotiations. We're forbidden by law to be involved in
14 those negotiations. Federal Rule of Criminal Procedure 11
15 controls that. And as the Supreme Court has discussed in
16 *Davila*, 113 S.Ct. 2146, there are great risks to the defendant
17 and to the entire process from a court being involved in the
18 plea negotiation process. So in the normal course, a court
19 doesn't even know how those negotiations unfolded, the
20 strategies that were employed, the timing of the negotiations.
21 We don't know about rejected offers in the normal course,
22 because it's not relevant to sentencing.

23 But when a defendant is proceeding to trial, it is the
24 court's practice in this district, and now I believe around the
25 country, to inquire about plea negotiations. As the Supreme

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1 Court has explained in *Missouri*, 132 S.Ct. 1408: The court has
2 a duty to inquire to ensure against fraudulent or fabricated
3 claims after trial asserting that defense counsel was
4 ineffective for not sharing a plea offer with the defendant
5 before trial. These issues have been discussed at length in a
6 number of Second Circuit cases. I'll name just two. *Kovacs*,
7 744 F.3d 44. *Fulton*, 802 F.3d 257.

8 Therefore, at our final pretrial conference, I
9 inquired, as it is my custom to do, about whether or not there
10 had been plea offers or plea negotiations and whether defense
11 counsel had communicated, as it is required to, any plea offers
12 to the defendant.

13 Later, it became important after the defendant pled
14 and wrote a letter to the Court which implied that he might
15 seek to have new counsel for purposes of sentencing or implied
16 that he might be pursuing an ineffective assistance claim, it
17 became important for me to address the plea negotiation issues
18 in more detail, and so we had an April 6 conference, and I set
19 forth my findings beginning at page 31 of that transcript about
20 the progress of those negotiations. I found, and I still find,
21 that there was no formal offer of a 15-year plea at any point
22 by the government. The defendant's April 22 memorandum in
23 connection with this sentence I don't think correctly and
24 accurately captures the history of those plea negotiations, but
25 at page 15 of that memorandum it explicitly indicates that the

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1 defendant does not seek to re-argue the April 6 issues or my
2 findings.

3 But that takes us to the broader issue here. Whatever
4 those negotiations were, what is their impact on this
5 sentencing proceeding? The defendant argues in its sentencing
6 memorandum that those negotiations should set a cap for
7 sentencing here; that no sentence should be greater than 15
8 years because the government once believed that that was
9 adequate to meet the Section 3553(a) goals. Of course, the
10 defendant doesn't cite any law to support that proposition, and
11 I think it's entirely wrong both factually and legally. Plea
12 negotiations are driven by a variety of factors at many points
13 during prosecution -- factors the defendant considers, factors
14 that the government considers. There is an evolution. I've
15 described my findings as to what happened in this case at the
16 April 6 conference, and I'm not going to repeat them here, but
17 it is not the policy factors that drive plea negotiations that
18 govern a sentencing decision. A sentencing decision is
19 governed by Section 3553(a). Those are the considerations that
20 drive my sentencing decision. There may be some overlap
21 perhaps in some case, but there's no general duty that a court
22 would inquire at sentencing about the history of plea
23 discussions. That's not normally a part of the sentencing
24 discussion.

25 Many of the Section 3553(a) factors have nothing to do

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1 with the issues that might drive negotiations in a particular
2 case between the government and a defendant. There are, I
3 think, strong policy reasons to keep those two parts of the
4 process separate. If the history of plea negotiations were
5 essential to a Section 3553 analysis, then I think they would
6 be part of every sentencing proceeding. There is some
7 precedent that applies to this. *Negron*, 524 F.3d 361 (2d Cir.
8 2008) indicates that a court may consider a rejected plea offer
9 but is not required to do so. *Kadir*, 718 F.3d 126 (2d Cir.
10 2013) recognizes that a Court may impose a sentence higher than
11 that contained in a rejected plea agreement. And, of course,
12 we're all very familiar with the law that governs stipulated
13 guidelines ranges. The law is well-established that even when
14 the parties agree as to a stipulated guidelines range, the
15 Court must make its own separate evaluation and may vary and
16 depart, either one, from the parties' agreement or may reach
17 another range based on its fact-finding of what is appropriate.
18 I will cite just one case in that regard. *Woltmann*, 610 F.3d
19 40. So here I will try to follow to the best I can Section
20 3553(a), its various factors and considerations. I will give
21 the history of plea negotiations here such weight as I believe
22 they deserve in the context of all the other information the
23 parties have provided to me.

24 There is another argument that is made in the
25 defendant's sentencing submissions, and that has to do with the

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1 sentences imposed upon the two co-defendants that I've already
2 sentenced Mr. Marmilev and Mr. Chukharev. I've considered
3 those sentences, I've considered their roles, I've considered
4 the facts, as I have with respect to Mr. Budovsky. I'm aware
5 of the potential for disparity here in imposition of sentence
6 and in trying to weigh what I think is appropriate in their
7 cases and in this case and give each the weight they deserve.

8 So let's turn to what I think is a real significant
9 issue here -- and the parties have addressed this orally today
10 as well as in their submissions -- the issue of recidivism.
11 Defendant argues that he's at a low risk for being a
12 recidivist. I don't find that to be true at all. Defense
13 counsel in his very eloquent statement to me today has said
14 that the government's submission ignores the humanity of the
15 defendant. I think the defendant's submissions -- and I've
16 received several written submissions -- ignore the humanity of
17 the many victims of the underlying frauds here which were
18 facilitated, encouraged, assisted in significant ways by
19 Mr. Budovsky and the money-laundering operation he ran. I
20 don't find any genuine remorse expressed to me. I don't find
21 any heartfelt acknowledgment of the depth of criminality, the
22 widespread impact or the enormity of what he did. I find
23 submissions that attempt to shift blame: Shift blame to
24 Mr. Kats, shift blame to the victims of the various frauds,
25 ultimately whose money was laundered by the people who stole

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1 from them or defrauded them through the Liberty Reserve system.
2 In the face of overwhelming evidence of criminal intent and a
3 massive complex criminal scheme, he's chosen to quibble around
4 the edges. He's made it seem like there are disputes when
5 there really are none in so many of the individual cases.

6 And, of course, there is the history of what happened
7 with the Gold Age prosecution. He entered a plea of guilty in
8 2006. By then he'd already launched Liberty Reserve. That
9 happened in 2005. He didn't discontinue the operations. In
10 fact, he then took steps to move the operation offshore to
11 Costa Rica, which is where he went in 2008. And after he went
12 there, he forced Mr. Kats out of the business and ran it
13 essentially by himself from then on.

14 While there, he engaged in a massive deception of
15 SUGEF and the Liberty Reserve compliance team such as it was.
16 And when Costa Rica did what it did, he took steps to appear to
17 be moving the operations a second time to another country. So
18 I think he presents a grave risk of recidivism here.

19 Beyond that, in terms of the issues of deterrence, I
20 think there is enormous importance to deterring him from
21 returning to this kind of fraudulent activity. Sad to say,
22 Mr. Budovsky has used his enormous talents here in a way that
23 has led to widespread harm, countless victims of fraud around
24 the world, many, many, many in the United States, and, of
25 course, there's the issue of general deterrence. This is such

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1 a difficult crime to investigate and bring to justice -- moving
2 operations offshore, moving them to countries that have less
3 diligent antimoney-laundering procedures, less well-healed in
4 terms of funding its regulatory and law enforcement
5 communities. The challenges are enormous in this digital age
6 of having effective law enforcement in this kind of e-currency
7 market and money-laundering scheme. So there is an enormous
8 importance to thinking about general deterrence here. And, of
9 course, I have to return again to the issue of appropriate
10 punishment. I've spoken about the enormity of the crime here,
11 the scale, the success, the longevity, the complexity. All of
12 these deserve appropriate punishment.

13 Mr. Budovsky, please stand.

14 I impose a term of imprisonment of 20 years to be
15 followed by a term of supervised release of three years with
16 the following special conditions: You shall report to the
17 probation office in the district in which you are released
18 within 72 hours of release from custody.

19 You shall not commit another federal, state or local
20 crime.

21 You are prohibited from possessing a firearm or other
22 dangerous weapon.

23 You shall cooperate in the collection of DNA.

24 You must pay the fine I am going to impose.

25 You must comply with the standard conditions of

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1 supervised release.

2 You shall submit to a reasonable search by the
3 probation department.

4 You shall comply with the immigration laws of this
5 country.

6 You shall submit to deportation and not unlawfully
7 reenter this country.

8 You shall provide the probation department access to
9 any and all requested financial information.

10 You shall pay a special assessment of \$100.

11 You shall pay a fine of \$500,000.

12 I am imposing terms of supervised release here, and a
13 term of supervised release because while I understand the
14 defendant will be deported, it's impossible for me to foretell
15 the future, and therefore I want to make sure that should the
16 defendant not be deported or should he unlawfully reenter this
17 country, that I have a period of supervised release that will
18 address that.

19 Mr. Everdell, is there any legal reason why I cannot
20 impose the sentence I've described as stated?

21 MR. EVERDELL: No, your Honor. There is a matter of
22 forfeiture, but we will attend to that later, I suppose.

23 THE COURT: I have signed one forfeiture order which
24 you presented to me.

25 MR. EVERDELL: Yes, your Honor. There is also a money

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1 judgment of \$122 million. I believe the Court needs to orally
2 impose that at the time of sentencing. It's in the plea
3 agreement with the parties.

4 THE COURT: I believe that's the preliminary order
5 that was already signed in connection with the plea. Is there
6 a different document you're talking about?

7 MR. EVERDELL: I apologize, your Honor. You're
8 absolutely right. I think that all that needs to happen is for
9 the Court to say the two consent preliminary orders of
10 forfeiture are now final as to the defendant.

11 THE COURT: Yes. Both orders of forfeiture are a
12 component of this sentence.

13 MR. EVERDELL: Thank you, your Honor.

14 THE COURT: A schedule for a fine should be paid at
15 15 percent of the defendant's gross monthly income. Should he
16 be in UNICOR work program while in prison, he shall pay
17 50 percent of his monthly earnings. If he's in a non-UNICOR
18 work program, he shall pay \$25 per quarter towards the fine.

19 Mr. Kaley, is there any legal reason I cannot impose
20 the sentence I've described as stated?

21 MR. KALEY: No, your Honor.

22 THE COURT: I order the sentence I've described on the
23 record to be imposed as stated.

24 Mr. Budovsky I need to advise you of your right to
25 appeal. If you are unable to pay the cost of an appeal, you

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1 may apply for leave to appeal in forma pauperis. Any notice of
2 appeal must be filed within 14 days of the judgment of
3 conviction. You may be seated.

4 I believe there is an underlying instrument.

5 MR. EVERDELL: Yes, your Honor. At this time the
6 government moves to dismiss all underlying counts against the
7 defendant.

8 THE COURT: Your application is granted.

9 Counsel, is there anything further that we need to do?

10 MR. KALEY: Yes, your Honor. We would respectfully
11 request that the Court recommend to the Bureau of Prisons that
12 Mr. Budovsky be designated to Fort Dix to facilitate family
13 visitations.

14 THE COURT: I'm going to decline that recommendation.

15 Is there any medical care that you wish me
16 particularly to bring to the Bureau of Prisons' attention?

17 MR. KALEY: Your Honor, what I will do is I will get
18 the medical records from the MCC and make sure that they travel
19 with Mr. Budovsky.

20 THE COURT: OK.

21 MR. KALEY: Your Honor, as opposed to recommending
22 Fort Dix, would you at least recommend the metropolitan area.

23 THE COURT: No.

24 MR. KALEY: Then one final --

25 THE COURT: We have a 20-year term of imprisonment

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1 here. I want to give the Bureau of Prisons ample opportunity
2 to think what the appropriate institution is.

3 MR. KALEY: Because the period of incarceration is so
4 long, all the more reason to recommend something so that his
5 family can at least visit him.

6 THE COURT: I've declined your request.

7 MR. KALEY: Then one final question, your Honor. My
8 understanding is that Mr. Budovsky would receive credit towards
9 his sentence for the time when he was arrested in Spain on
10 May 24, 2013.

11 THE COURT: Yes, and I'm going to make that specific
12 recommendation to the Bureau of Prisons. My understanding is
13 that he should receive credit for the time he has been in
14 custody, which would run from May 24, 2013.

15 MR. KALEY: Thank you, your Honor.

16 THE COURT: Yes. Thank you.

17 (Adjourned)
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